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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.360 OF 2003

Rangnath Hanumant Pawar)
Convict No.C12089)
presently lodged at Yerawada)
Central Prison, Pune.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Ms.Latika Nevrekar, Advocate appointed for final hearing, for the Appellant.

Mrs.V.R. Bhosale, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 28TH AUGUST 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. By this Appeal, the Appellant impugns the judgment and order of the IIIrd Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.112 of 2000. He has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life.

2. It is the case of the prosecution that the accused resided with his wife Sitabai and his son Arun in the house of one Sitaram Gade. The accused spent

Rs.10,000/- in cash for the marriage of his son besides presenting his daughter in law with gold ornaments on that occasion. He often demanded the amount of Rs.10,000/- from his son as well as the return of the gold ornaments. This led to frequent quarrels between the father and the son. Six months after his marriage, Arun left the house with his wife and stayed separately from his parents. He visited his parents almost every week when his mother often complained that the accused beat her and quarrelled with her because Arun had not returned the money and the gold ornaments. On 19th December 1999, the accused threw a grinding stone on his wife while she was asleep at about 3.00 a.m. The deceased Sitabai sustained a bleeding injury on her head. The accused informed his son Arun of the incident in the morning. It is the case of the prosecution that the accused confessed to his son about having committed the murder and asked him to save him. The deceased was taken to hospital by the accused, Arun and his wife. The deceased died on 23rd December 1999. The son lodged a complaint against the father on 20th December 1999. The case was registered initially under Section 307. However, after the death of Sitabai, it was registered under Section 302 of the Indian Penal Code.

3. The spot panchanama was prepared and the accused was arrested on 20th December 1999. His blood stained

clothes were seized by the police. After the death of Sitabai, an inquest panchanama was drawn up and the post mortem examination was conducted. The attached articles were sent to the Chemical Analyser who submitted a report stating that all the articles seized, including the grinding stone, the clothes of the accused and the clothes of the deceased, were stained with human blood.

4. It is in these circumstances that the accused has been found guilty of the offence punishable under Section 302 of the Indian Penal Code. There are no eye witnesses to the incident which occurred at about 3.00 a.m. Therefore, the case of the prosecution rests on circumstantial evidence. According to the prosecution, the circumstances pointing to the guilt of the accused are (i) that he had frequent quarrels with his wife since the son had not returned the money that he had spent for his marriage expenses; (ii) that the accused had confessed to PW1 of having committed the crime; (iii) that the grinding stone bore human blood; (iv) the blood stains on the clothes of both the deceased and the accused were identified as belonging to blood group "A" and (v) that the medical evidence indicated a head injury. The nature of the injuries suffered by the deceased has been described by PW4, the Doctor.

5. PW1 who has been examined is the son of the

deceased and the accused and is the complainant in the present case. He has deposed that his father, the accused, often quarrelled with him since he was unable to return the amount spent by his father for his marriage. He has further deposed that he had complained to the police about the incident on 20th December 1999, only after there was a discussion with his relatives in the hospital in the afternoon of 20th December 1999. On the other hand, the statement of the accused recorded under Section 313 of the Criminal Procedure Code indicates that he has denied having committed the offence. He has stated that when he went to answer the call of nature at midnight of 18th December 1999 and 19th December 1999, his son PW1 came inside the house and threw a grinding stone on his wife's head. He has further stated that his son had thereafter lodged a false complaint against him. The Doctor, PW4, has deposed that when the deceased was brought in an unconscious condition to the hospital, the accused had informed him that the deceased was assaulted by thieves. Therefore, we are now faced with three stories, namely, (i) that the accused had killed the deceased; (ii) that the son had killed the deceased and (iii) that the deceased was killed by thieves.

6. If in fact the son PW1 is correct that the accused had killed the deceased and that he had

confessed to having committed the crime when he met PW1 early in the morning on 19th December 1999, it would have been natural for PW1 to lodge a complaint immediately with the police. However, the FIR was lodged only on 20th December 1999 i.e. more than twenty four hours after the incident. This does not appear to us to be a natural conduct of a son. Moreover, in his FIR he has not stated that the accused had confessed to having committed the crime. Therefore, there is a great variance between the deposition of PW1 in Court and the FIR lodged by him. The prosecution has mainly relied on the extra judicial confession made by the accused to PW1. However, significantly, this extra judicial confession is not referred at all in the FIR. Thus, there is word against word that of PW1 saying that his father had killed his mother and that of the father-accused that his son had killed his wife. Admittedly, the son PW1 was present when the deceased was admitted to hospital and the accused had informed the Doctor that the deceased had suffered injuries on account of an assault by thieves. PW1 did not at this point of time deny his father’s statement to the Doctor, PW4. Nor did he care to file an FIR even at that stage. Therefore, in our opinion, it would be difficult to accept the case of the prosecution in these circumstances. The evidence of PW5 is also not relevant and does not support the prosecution as PW5 has been

declared as hostile.

7. The blood stains found on the grinding stone do not automatically link the accused to the crime. That the deceased suffered a homicidal death has been proved by the prosecution. However, it has been unable to establish beyond reasonable doubt, that it was the accused who inflicted the injuries on the deceased. Merely because the accused did quarrel with his wife one cannot draw the conclusion that it was he who committed the crime.

8. Appeal allowed. The conviction and sentence passed against the accused by the IIIrd Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.112 of 2000 is set aside. The accused be released forthwith if not otherwise required in any other case.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)